

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	AMENDED NOTICE OF
17.24.116 pertaining to application)	PROPOSED AMENDMENT
requirements for operating permit)	
)	(HARD ROCK MINING)

TO: All Concerned Persons

1. On September 8, 2005, the Board of Environmental Review published MAR Notice No. 17-230 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 1649, 2005 Montana Administrative Register, issue number 17. On December 22, 2005, the Board published an amended notice of public hearing on proposed amendment of the above-stated rule at page 2544, 2005 Montana Administrative Register, issue number 24, to change the time for the hearing at Fort Belknap on January 11, 2006, from 8:00 a.m. to 10:00 a.m. On January 6, 2006, the Department of Environmental Quality published an economic impact statement pursuant to 2-4-405, MCA, on the proposed rule amendments.

2. This amended notice of proposed amendment is being published to extend the public comment period to March 17, 2006, to provide the public an additional opportunity to comment on the amendments proposed in MAR Notice No. 17-230, to provide the public with an opportunity to comment on potential modifications to the original rule amendments, and to provide the public an opportunity to comment on the existing and future economic impact statements on the proposed rules.

3. The Board is considering two modifications to the proposed rule amendment published in MAR Notice No. 17-230. One modification would expressly exempt from proposed ARM 17.24.116(6) mines that have permits on the date that ARM 17.24.116(6) becomes effective. This exemption would include permit amendments and revisions issued after the effective date of proposed ARM 17.24.116(6). The second modification would change the requirement that a reclamation plan must "conclusively demonstrate" that no long-term water treatment will be necessary to a requirement that the reclamation plan "demonstrate by clear and convincing evidence" that no long-term water treatment will be necessary. With these modifications, the rule amendments would read as follows:

"(6) Except as provided in (7), the reclamation plan must demonstrate by clear and convincing evidence that, after the period of time allotted by 82-4-336(3), MCA, no treatment of surface or ground water for carcinogens or toxins will be required to meet water quality standards at the point of discharge. For the purposes of this section, completion of mining operations is defined in ARM 17.24.150(1) and (2).

(7) Section (6) does not apply to mines with valid permits in existence on [the effective date of (6)] or to existing or future amendments or revisions to those permits.

4. The reason for (7) is that, for existing mines for which long-term water treatment will be necessary, the rule amendment would be impossible to implement. The rationale for the change in the standard of proof is that a conclusive demonstration, at the time of permit issuance, would be impossible in most situations, even in situations in which most evidence indicates that long-term water treatment would not be necessary. The clear and convincing evidence standard is less stringent. It is an intermediate standard between "preponderance of the evidence," which requires proof by more than 50% of the evidence, and the "beyond a reasonable doubt" standard.

5. The Board has also directed the Department of Environmental Quality to prepare an amended economic impact statement on adoption of the rule amendments with the modifications noted above. The amended economic impact statement will be available by February 15, 2006, and can be obtained by accessing the Department's website at www.deq.mt.gov or submitting a request to the address or telephone number provided in paragraph number 6.

6. The Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking or need an alternative accessible format of this notice. If you require an accommodation, contact the Board no later than 5:00 p.m., March 7, 2006, to advise us of the nature of the accommodation that you need. Please contact the Board Secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or email ber@mt.gov.

7. Concerned persons may submit their data, views or arguments concerning the proposed actions in writing to the Board of Environmental Review, P.O. Box 200901, Helena, Montana, 59620-0901, no later than March 17, 2006. To be guaranteed consideration, mailed comments must be postmarked on or before that date. Written data, views or arguments may also be submitted by fax at (406) 444-4386 or electronically via email addressed to the Board Secretary at ber@mt.gov, no later than 5:00 p.m. March 17, 2006.

8. The Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Such written request may be mailed or delivered to the Board of Environmental Review, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, emailed to the Board Secretary at ber@mt.gov, or may be made by completing a request form at any rules hearing held by the Board.

Reviewed by:

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BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

By: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State January 13, 2006.